



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,003	11/07/2001	Ross F. Heil	TILA-01096US0	1154

23910 7590 12/08/2003

FLIESLER DUBB MEYER & LOVEJOY, LLP
FOUR EMBARCADERO CENTER
SUITE 400
SAN FRANCISCO, CA 94111

EXAMINER

ASHLEY, BOYER DOLINGER

ART UNIT PAPER NUMBER

3724

DATE MAILED: 12/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/040,003

Applicant(s)

HEIL ET AL.

Examiner

Boyer D. Ashley

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 September 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 20-25 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-17, 28, 29 and 33 is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-10, 18, 26, 30 and 32 is/are rejected.
- 7) ☒ Claim(s) 7, 19, 27 and 31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 3724

DETAILED ACTION

1. This office action is in response to applicant's amendment filed 9/24/03, wherein claims 1-6, 8-11, 13-14, 16, 18, 26, 28, 30, 32 and 33 were amended. Claims 20-25 remain withdrawn from consideration as being drawn to a non-elected invention.

Drawings

2. The proposed drawing corrections were received on 9/04/03. These drawings are approved.

Specification

3. The use of the trademark "FOODSAVER SYSTEM" in paragraph [0022] has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-2, 18, 30 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Welch et al., U.S. Patent 5,894,978.

Welch et al. discloses the same invention as claimed including, for example:

Art Unit: 3724

a platform (10) with a proximal end (the left side as shown in Figure 3) and a distal end (the right side as shown in Figure 3) capable of supporting a vacuum bag sealing apparatus depending upon the size of the sealing apparatus and the size of the device of Welch et al.; a storage unit (the rear portion of element 6) connect with and extending above the platform from said distal end (see Figure 1), the storage unit has a first roller (20) capable of accommodating a roll of material (22); a base (8/50) supporting the platform having an inlet (on the right between 10 and 50 wherein the web 24 enters as shown in Figure 3) and an outlet (58) adjacent to the proximal end; a slidable cutting mechanism (60/68/62/74, each blade is slidable along the bar 60) capable of cutting the web material passed through the base; wherein the sealing apparatus is capable of being supported on the platform between the storage unit and the cutting mechanism.

As to claim 2, the device of Welch et al. is capable of selectively accommodating small and large rolls of web material by merely replacing one for the other, wherein the width of the small roll is narrower than that of the larger roll.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Welch et al., in view of Helmus, Jr., U.S. Patent 3,524,373.

Art Unit: 3724

Welch et al. discloses the invention substantially as claimed except for: the first roller having a tapered portion for the purpose aligning the a small roll on the roller. However, Helmus discloses that it is old and well known in the art to use taper portions on roller for the purpose of facilitating alignment of a web of material on a roller (see Figure 4 of Helmus, Jr.). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use a tapered portion on the roller of Welch et al. in order to facilitate and maintain alignment of the roll of material on the roller.

8. Claim 4 is rejected under 35 U.S.C. 102(b) as anticipated by Welch et al. or, in the alternative, under 35 U.S.C. 103(a) as obvious over Welch et al.

Welch et al. discloses the use of an apparatus that is capable of being used with rolls of either width of eight or eleven inches. It should be noted that the in apparatus claims the workpiece does not serve to distinguish the claimed invention from the prior art.

In the alternative, even if it is argued that Welch et al. lacks the specific sized rolls, it would have been an obvious matter of design choice to use rolls of eight and eleven inches for the purpose of dispensing different sized workpieces depending upon the need of the user, because such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

9. Claims 5-6, 8-9, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Welch et al., in view of Staats et al., U.S. Patent 3,496,817.

Welch et al. discloses the invention substantially as claimed except for: the storage unit having a second roller for accommodating a second roll of material, wherein the base allows two feeds of material to pass through the inlet and outlet simultaneously. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use multiple rollers in the storage unit in order to accommodate multiple types of webs, because it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. Moreover, the inlet and outlet of Welch et al. is capable of having multiple webs run through the base simultaneously depending upon the size of the webs.

Furthermore, Staats et al. discloses that it is old and well known in the art to use multiple rollers for accommodating multiple webs of material that are simultaneously passed to a cutter for the purpose of cutting the multiple webs of material to identical lengths. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use an additional roller with the device of Welch et al. in order to accommodate additional webs of the material such that the two can be cut together.

As to claims 6 and 9, the modified device of Welch et al. is capable of allowing a user to access either a small roll or a large roll of material depending upon the size of the rolls used with the device. It should be noted that the in apparatus claims the workpiece does not serve to distinguish the claimed invention from the prior art.

In the alternative, even if it is argued that modified device of Welch et al. lacks the specific sized rolls, it would have been an obvious matter of design choice to use

Art Unit: 3724

large and small rolls for the purpose of dispensing different sized workpieces depending on the need of the user, because such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

10. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Welch et al. in view of Staats et al. as applied to claims 8 and 9 above, and further in view of Helmus, Jr., U.S. Patent 3,524,373.

Welch et al. discloses the invention substantially as claimed except for at least one roller having a tapered portion for the purpose aligning the roll on the roller. However, Helmus, Jr. discloses that it is old and well known in the art to use taper portions on roller for the purpose of facilitating alignment of a web of material on a roller (see Figure 4 of Helmus, Jr.) as well as for maintaining the position of a roll on a roller. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use a tapered portion on the roller of Welch et al. in order to facilitate and maintain alignment of the roll of material on the roller.

Allowable Subject Matter

11. Claims 11-17, 28-29, and 33 appear to be allowable over the prior art of record.

12. Claims 7, 19, 27 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

13. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

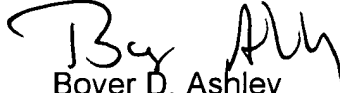
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 3724

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Boyer D. Ashley whose telephone number is 703-308-1845. The examiner can normally be reached on Monday-Thursday 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 703-308-1082. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Boyer D. Ashley
Primary Examiner
Art Unit 3724

BDA
3 December 2003